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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 280

NEWS SYNDICATE CO. INC.,

Petitioner,

—against—

ROBERT F. URBANO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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News Syndicate Co. Inc., respectfully petitions for a writ of certiorari to review a judgment of the Court of Appeals for the Second Circuit characterized by Chief Judge Lumbard in dissent as involving "important questions of federal jurisprudence" (21) which were "cavalierly treated by the majority" (24) or given only "a cursory look" (25).

Opinions Below

The opinions of the Court of Appeals are reported at 358 F. 2d 145 (2d Cir. 1966) (Appendix A). The opinion of the District Court is reported at 232 F. Supp. 237 (S. D. N. Y. 1964) (Appendix B).

Jurisdiction

The decision of the Court of Appeals is dated March 11, 1966. Rehearing by the original panel was granted by order on March 31, 1966. The decision was adhered to by order on May 6, 1966, Chief Judge Lumbard again dissenting. The judgment of the Court of Appeals was dated and filed on May 11, 1966. Pursuant to motion by petitioner, Chief Judge Lumbard and Judge Hays on May 24, 1966 recalled the mandate and stayed issuance pending application for certiorari to this Court.

Jurisdiction of this Court is invoked under 28 U. S. C. 1254(1), Federal Rule of Civil Procedure 17(b), and 28 U. S. C. §§1915 and 2072.

Questions Presented

(1) Where an individual is a member of a class who has been deprived of his right to sue, on a state created claim, by New York's Legislature, is Rule 17(b) applicable when that individual's right to sue has been challenged in a New York Federal Court?

(2) If Rule 17(b) is applicable, does it compel a New York Federal Court to entertain a suit, on a state created claim, by an individual domiciled in Massachusetts when New York's Legislature has specifically closed the doors of New York's courts to the class to which the individual belongs, and where Massachusetts law is silent on the issue?

(3) Is a holding that Rule 17(b) compels a Federal Court to entertain suit in such circumstances inconsistent with

Erie R. Co. v. *Tompkins*,[1] the Rules Enabling Act,[2] *Woods* v. *Interstate Realty Co.*[3] and with *Klaxon* v. *Stentor Electric Manufacturing Co.*[4]

(4) May an action devoid of merits on its facts be brought *in forma pauperis* pursuant to 28 U. S. C. §1915?

(5) Has the Court of Appeals, by reversing a judgment of the District Court on the merits without permitting the appellee (petitioner herein) a hearing or opportunity to submit briefs on the merits "so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision," Rule 19 of the Supreme Court of the United States?

Statutes and Rules Involved

The Federal Rule of Civil Procedure involved is Rule 17(b), which provides in pertinent part:

> "(b) Capacity to Sue or be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile."

The pertinent, and we believe controlling state statute, is New York Penal Law, §511 which states *inter alia*:

> "§511. Consequences of sentence to imprisonment for life.

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[1] 304 U. S. 64 (1938).

[2] 28 U. S. C. §2072.

[3] 337 U. S. 535 (1949).

[4] 313 U. S. 487 (1941).

1. A person sentenced to imprisonment for life is thereafter deemed civilly dead;

* * * * *

3. Nothing in this section shall be deemed to suspend the right or capacity of a person sentenced to imprisonment for life, while he is released on parole, or after he has been discharged from parole, to institute an action or proceeding in a court . . . "

In addition, 28 U. S. C. §2072, 28 U. S. C. §1915 and Rule 19 of this Court are also involved (Appendix C).

Statement

This action for libel was commenced in the United States District Court for the Southern District of New York solely by reason of diversity jurisdiction. Respondent Robert F. Urbano is presently serving a life sentence for murder in the New Jersey State Penitentiary in Trenton, New Jersey.[5] The basis for the action is an article published on December 9, 1962 in petitioner's newspaper (Appendix D). The article was founded entirely upon a press release issued by the Department of Justice of the United States, Federal Bureau of Investigation (Appendix E). That release described not only the robbery-murder under which Urbano today serves sentence, but also some thirteen (13) bank robberies and two (2) department store robberies attributed to Urbano as well as his five (5) year suspended

[5] The Federal and State Courts have denied respondent's writs of habeas corpus, finding that he was justly and legally sentenced for the crime. *Urbano* v. *State of New Jersey*, 225 F. Supp. 798 (D. N. J.), *cert. den.* 377 U. S. 958 (1964), aff'd 333 F. 2d 845 (3d Cir. 1964), *cert. den.* 379 U. S. 993 (1965), and unreported State orders cited 225 F. Supp. at p. 800.

sentence in Arizona for burglary. Respondent's claim of libel rests solely upon that part of petitioner's article that referred to the bank robberies.

Because respondent was (and still is) serving a life sentence, petitioner moved in District Court for an order dismissing the complaint in light of New York Penal Law §511. Petitioner also opposed a motion by respondent for leave to proceed *in forma pauperis* and asked that the complaint be dismissed on the ground that the alleged cause of action had no merit. The counsel appointed by the District Court to represent respondent on the motions, filed a memorandum. In addition, respondent himself filed two affidavits and three memoranda.

The District Court dismissed the action on April 20, 1964. In doing so, that Court, citing Rule 17(b), looked first to the law of respondent's domicile (Massachusetts), and found it was unclear as to whether respondent's life sentence disabled him from maintaining an action in New York (29). It then held that

> "Section 511 embodies a declared public policy of New York and hence is a rule of New York substantive law binding on this Court under the doctrine of Erie R.R. v. Tompkins, supra, and acts as a complete bar to this Court taking jurisdiction of this action notwithstanding Rule 17(b) of the Federal Rules of Civil Procedure" (32).

With respect to the alternative relief requested by petitioner, namely, to deny respondent's motion to proceed *in forma pauperis* and to dismiss the complaint for lack of merit pursuant to 28 U. S. C. §1915(d), the District Court saw a question as to whether respondent "had any reputa-

tion to injure under the circumstances and whether defendant's article, published fifteen months after the F. B. I. news release was privileged." Consequently, the Court stated it would have denied the alternative relief if it had been the sole ground for the motion (32).

Thereafter, with leave to file a notice of appeal *in forma pauperis,* respondent moved the Court of Appeals (1) for leave to appeal *in forma pauperis* and (2) for appointment of counsel to represent him on that appeal. *That was the only relief requested.* A short affidavit was submitted by petitioner's counsel on June 22, 1964 opposing only respondent's request to proceed *in forma pauperis.* On March 11, 1966, Circuit Judges Waterman and Hays, Chief Judge Lumbard dissenting, decided not only respondent's motion to proceed *in forma pauperis,* but—without an Appendix on Appeal, without benefit of briefs on appeal and without benefit of argument or a hearing of any sort on the merits—*sua sponte* decided the appeal on the merits and reversed the order below.

In his opinion Judge Hays observed "there was no showing that under the law of his domicile plaintiff was incapable of suing". He neither discussed nor cited any Massachusetts authority. Neither did he discuss the central issue of the decision of the District Court, namely: the scope of Rule 17(b) in face of the substantive public policy of the State of New York as embodied in Penal Law §511. Judge Hays merely stated that "it was error to apply the law of New York" in face of Rule 17(b). This, Chief Judge Lumbard characterized as "cavalier treatment" of an "important issue of federal jurisprudence." He added "perhaps ultimately the question is so wrapped up in choice of law problems that Rule 17(b) *as applied here* runs contrary to

the decision in *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U. S. 487 (1941), which held that the choice of law rules to be applied by Federal Court in a diversity suit must conform to the rules prevailing in the forum state" (emphasis added) (25).

As to the merits of respondent's action, Judge Hays again with no discussion stated that he was of the opinion that the complaint was not so frivolous "as to justify dismissal at this stage of the proceeding" (21). Chief Judge Lumbard dissented: "I . . . hold that this claim, while technically 'actionable' is so devoid of merit on its facts . . . that it should not be permitted to go to trial at the public's expense" (24).

Petitioner filed a petition for rehearing on March 25, 1966 which was granted by the original panel on March 31, 1966. With no papers or briefs other than the petition for rehearing and its appendix, Judges Hays and Waterman adhered to their original decision on May 6, 1966, Chief Judge Lumbard dissenting. Reissuance of the mandate was stayed by the Court of Appeals pending application to this Court for certiorari.

The Reasons for Granting the Writ

This case raises important questions as to the scope and application of Rule 17(b) and the relationship between state law and the federal rules.

Specifically, the opinion below requires reversal for the following reasons:

(1) Under the majority opinion federal courts will be required to apply Rule 17(b) in all capacity cases, including

those where the state has closed its doors to suits on state created claims by specific persons and has thus allowed such persons no remedy for their alleged wrongs. Such an application of Rule 17(b) is directly contrary to this Court's holding in *Woods* v. *Interstate* and the legislative mandate of the Rules Enabling Act, 28 U. S. C. §2072.

(2) Even if Rule 17(b) were applicable, the majority opinion is in error in that it compels a federal court to apply the law of the domicile even though that rule is clearly in conflict with the express public policy of the forum. Thus, federal courts will entertain suits which have been absolutely barred by the courts of the state in which they sit, if the law of the domicile permits such suits, or, as here, is unclear as to that issue. Such an interpretation gives to Rule 17(b) a scope not contemplated by the framers of the Rule and creates a conflict between the Federal Rule and state law where none need exist. Hence, it requires that Rule 17(b) be held invalid under the Rules Enabling Act because the Rule, as applied, enlarges substantive rights created by state law. It also requires a finding that Rule 17(b), as applied, is invalid under the holding of *Klaxon* v. *Stentor Electric Manufacturing Co., supra.*

Reversal is also required because:

(3) The Court of Appeals radically deviated from the accepted and usual course of judicial proceedings, and

(4) The action is devoid of merit and, hence, does not satisfy the requirements of 28 U. S. C. 1915.

I

The prime error of the Court below was in holding that Rule 17(b) is applicable in this case. Such a holding ignores a fundamental difference between two aspects of the concept of capacity to sue and means that Rule 17(b) governs whenever either aspect is in issue.

The difference between the two aspects can best be described in terms of examples. First, a person may be deemed to lack capacity to sue because the correct mode of asserting the right has not been chosen, as where a minor personally brings suit when, under the law of the forum, suit must be brought only by his guardian. Such capacity might properly be termed technical or procedural capacity.[6]

Second, a person (or corporation) may also be deemed to lack capacity because he, or it, lacks the fundamental right to sue, and, hence, the right to obtain a remedy, as where a statute prohibits suits by foreign corporations who have not qualified to do business within the forum state, or where a statute, like the one here, prohibits suits by those serving life sentences. In instances of this sort, i.e., where a person lacks capacity because he has been denied the right to obtain a remedy in the courts, there is no procedural or technical requirement which he can meet which will allow him to enforce his rights. The doors of the courts are completely closed to such an individual.

We submit that Rule 17(b) is applicable only to instances where the incapacity is a technical one, and cannot be ap-

[6] These terms are apt because a finding of incapacity in such instances can be cured by taking the proper procedural steps, e.g. having a guardian appointed.

plied where the incapacity consists of the complete deprivation of the right to sue and where no procedural devices are available for curing that incapacity.

The majority below applied Rule 17(b) without regard for this distinction and thereby created a right to sue which does not exist under the law of New York.[7] That application blatantly violates the mandate of the Rules Enabling Act and is directly contrary to *Woods* v. *Interstate Realty Co.*, 337 U. S. 535 (1949). In *Woods*, respondent was a Tennessee corporation that had done business in Mississippi but had not qualified to do business there. The Mississippi statute provided that "any foreign corporation failing to

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[7] On this record, no question as to New York law is before this Court. Judge Bonsal, the only judge to whom this question was briefed and argued, held that the New York statute prohibits suits such as the one here. The majority below did not challenge that holding. In any event, there can be no doubt on that issue. The statute itself talks in terms of "right or capacity" (§511[3] New York Penal Law). And see 1952 Legislative Document No. 65 (Q) entitled, "Capacity of person sentenced to prison for life to sue," McKinney's 1952 Session Laws of New York, pp. 1182-83 (Appendix G). The cases are equally clear that the suit permitted by the majority's application of Rule 17(b) is clearly barred by Section 511 of the New York Penal Law. *Avery* v. *Everett*, 110 N. Y. 317, 332-33 (1888); *In Re Lindewall's Will*, 287 N. Y. 347 (1942); *Pallas* v. *Misericordia Hospital*, 264 App. Div. 1 (3d Dep't 1942), aff'd 291 N. Y. 692 (1943); *Jones* v. *Jones*, 249 App. Div. 470 (3d Dep't), aff'd 274 N. Y. 574 (1937); *Garner* v. *Schulte Co.*, 23 A. D. 2d 127 (3d Dep't 1965). Judge Lumbard's doubt as to this issue was expressed at a time he had been deprived of the benefit of briefs and arguments by the Court's unorthodox handling of this case. Had this case been handled in accordance with established judicial procedure we could have pointed out to Judge Lumbard, prior to his dissent, that *Panko* v. *Endicott Johnson Co.*, 24 F. Supp. 678 (N. D. N. Y. 1938), a case which troubled Judge Lumbard, had been overruled, *sub silentio* by the New York Court of Appeals in *In Re Lindewall's Will*, 287 N. Y. 347 (1942) and *Pallas* v. *Misericordia Hospital*, 291 N. Y. 692 (1943).

qualify shall not be permitted to bring or maintain any action or suit in any courts of this state." This Court held that the statute of Mississippi barred respondent from commencing an action in the federal court. In speaking for this Court, Mr. Justice Douglas stated:

> "[W]here . . . one is barred from recovery in the state court, he should likewise be barred in the federal court. The contrary result would create discriminations against citizens of the State in favor of those authorized to invoke the diversity jurisdiction of the federal courts. It was that element of discrimination that Erie R. Co. v. Tompkins was designed to eliminate." [8]

The same result has been reached where under state law a particular type of suit has been prohibited, and the plaintiff, while not barred from the courts, has no remedy for the alleged wrong. *Angel* v. *Bullington*, 330 U. S. 183

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[8] Professor Moore in 3 Moore's Federal Practice, 1397 has stated, citing *Angel* v. *Bullington* and *Woods* v. *Interstate Realty*: "While technically the corporation may have capacity to sue in the federal court pursuant to Rule 17(b) it cannot recover where recovery would not be possible in the state court. Any valid state law closing its courts to a foreign corporation which is not qualified to do business in the state must, therefore, be given effect in the federal courts of such state in a case based solely on diversity or alienage jurisdiction. To this extent Rule 17(b) has been qualified." This principle has also been applied by the lower federal courts. For example, in *Meisner* v. *Reliance Steel & Aluminum Co.*, 273 F. 2d 49 (9th Cir. 1959) the Court of Appeals applied a California statute, which closed the doors of the courts to suits for brokerage fees by individuals who had not obtained a license, to bar a suit by a non-resident of the forum. The Court stated: "The policy of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, precludes maintenance in federal court in diversity cases of suits to which the state has closed its courts [citing *Angel* v. *Bullington* and *Woods* v. *Interstate Co.*]," 273 F. 2d at 50.

(1947) and *Guaranty Trust Co. of New York* v. *York*, 326 U. S. 99 (1945). The latter case held:

> "But since a federal court adjudicating a State-created right solely because of the diversity of citizenship of the parties is for that purpose, in effect, only another court of the State, it cannot afford recovery if the right to recover is made unavailable by the State nor can it substantially affect the enforcement of the right as given by the State."

In short, where the state has closed its doors to a given type of suit, as in *Angel* and *Guaranty*, or to a defined class of suitors as in *Woods*, and as here, Rule 17(b) is not applicable. The Second Circuit, however, applied Rule 17(b) to such a situation and thus permitted a suit to be brought in the Federal Court "where application of the state rule would wholly bar recovery [citing *Woods* v. *Interstate*]" *Hanna* v. *Plumer*, 380 U. S. 460, 469 (1965). Such a result is not permissible (*ibid.*).

II

Even if Rule 17(b) is applicable to both aspects of the concept of capacity to sue, the majority below applied that Rule in a manner which requires reversal.

Here the law of New York, the forum, contains a statutory provision closing the doors of its courts to suits by individuals sentenced to life in prison. The law of Massachusetts, plaintiff's domicile, is silent, or at best unclear, as to the right of such a prisoner to sue.

Under these circumstances, does Rule 17(b), which states that capacity to sue shall be determined by the law of the

domicile, create a conflict between the Federal Rule and the law of New York? We believe it does not. The two are reconcilable if Rule 17(b) is applied as a rule which compels the federal court to look to the law of the domicile only *in the first instance;* not as an absolute, all encompassing choice of law rule which forces the court to ignore the law of the forum when, as here, the public policy of the forum has been clearly expressed in a statute. In other words, Rule 17(b) may supplant choice of law rules to the extent that the federal court is compelled to look first to applicable foreign law. However, when that foreign law is ascertained to be in conflict with a strong public policy of the forum, normal conflict of laws concepts take over and the forum's public policy must prevail.

But, the majority below erroneously rejected this reconciliation. It held that Rule 17(b) was an absolute rule, precluding reference to the forum's law in all circumstances, and that Judge Bonsal was in error when he heeded the command of the New York Statute. Thus, the opinion below creates, in this case and in similar situations, a conflict between Rule 17(b) and state law.

This unwarranted expansion of Rule 17(b) is precisely the kind of broad reading of federal law which this Court warned against in *Bernhardt* v. *Polygraphic Co.*, 350 U. S. 198, 202 (1956). It creates an unnecessary conflict between federal and state law. Absent that conflict, there is no question that Judge Bonsal was correct in holding *Erie* compelled application of New York law. As this Court has recently stated: "[where] the scope of the Federal rule is not as broad as the losing party urged, and, therefore, there being no Federal rule which covered the point in

dispute, *Erie* commanded the enforcement of state law." *Hanna* v. *Plumer*, 380 U. S. at 470 (1965).[9]

The majority opinion, however, did more than create a conflict where none existed. It resolved that conflict in favor of the Federal Rule, and hence, permitted a suit to be brought in Federal Court where application of the state rule would wholly bar recovery. By so doing, it applied Rule 17(b) in a manner which affects the "substantive rights" of the parties, and thus violates the Rules Enabling Act, *supra*.

It also sanctioned the most blatant form of forum shopping, by allowing respondent to press a suit in federal court which he could not bring in state court. This, of course, should not be permitted.[10]

In like manner, by holding that Rule 17(b) embodied an absolute and unqualified choice of law rule, which compelled application of Massachusetts law in all circumstances, the majority interpreted Rule 17(b) in a way which makes that Rule invalid under the doctrine of *Klaxon, supra*.

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[9] This dictum in *Hanna* is consistent with the cases holding that state law controls in the face of a Federal Rule which touched on, but did not control, the issue. *Cohen* v. *Beneficial Ind. Ins. Corp.*, 337 U. S. 541 (1949); *Ragan* v. *Merchants Transfer & Warehouse Co.*, 337 U. S. 530 (1949); *Brown* v. *Cranston*, 132 F. 2d 631 (2d Cir. 1942), *cert. den.* 319 U. S. 741 (1943).

[10] See *Hanna* v. *Plumer*, 380 U. S. 460, 469. Another formulation of the problem, equally apropos, is that which adopts the reasoning of Judge Harlan, i.e., where state law, as here, prohibits an individual from seeking relief in its courts, a decision to allow suit in federal court necessarily " . . . gives rise to any impingement on the vitality of the state policy . . . " and clearly involves " . . . the choice of [a] rule [which] would substantially affect those primary decisions respecting human conduct which our constitutional system leaves to state regulation." *Ibid.*, pp. 475, 478.

There is a latent inconsistency between Rule 17(b) and the rule of *Klaxon* (which held that Federal courts must follow State conflict of laws rules). We submit that the inconsistency is not necessarily fatal to Rule 17(b). A properly limited application of Rule 17(b) avoids a clash between the two, just as that proper interpretation avoids a conflict with the Rules Enabling Act. The majority's application of Rule 17(b), however, creates an irreconcilable conflict by forcing a New York federal court to ignore both the public policy of New York and conflict of laws rule which requires that where foreign law conflicts with the public policy of the forum, the forum's law shall be applied. See *Klaxon* v. *Stentor, supra; Griffin* v. *McCoach*, 313 U. S. 498 (1941).

We respectfully submit that even if Rule 17(b) is applicable in cases of this sort, it cannot be applied to ride roughshod over the expressed public policy of the State of New York by permitting a suit in Federal Court by an individual who, by virtue of the explicit mandate of New York's Legislature has no capacity to sue in the courts of that state.

III

The procedure of the Court of Appeals in this case departed so far from the accepted and usual course of judicial proceedings that it calls for an exercise of this Court's power of supervision. The only proceeding before the Court of Appeals in relation to the appeal was a motion by plaintiff for permission to proceed *in forma pauperis*. With only that motion before it, and without any papers on the merits or any argument at all, the Court reversed the judgment below.

The petition for rehearing was granted but the original decision was adhered to without further briefs or any argument.[11] Petitioners were deprived of a judgment in their favor, without an appeal having been taken from that judgment and without an adequate appellate hearing.

IV

Finally, the Court of Appeals' opinion emasculates the concept of frivolousness which has been explicitly written into the *in forma pauperis* statute, 28 U. S. C. §1915. We argued below that the article was absolutely privileged[12] that there was no damage under New York law,[13] and that

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[11] The petition argued that reversal of a judgment in favor of a party, without giving that party a chance to be heard, might deprive that party of due process of law. In doing so, the petition dealt with the issues raised by the motion, pointed out the errors in the majority opinion and urged that these complex issues receive full consideration.

[12] Absolute privilege is accorded fair and true reports of official or judicial proceedings by New York law (New York Civil Rights Law §74, *Murphy* v. *News Syndicate Co. Inc.*, 12 N. Y. 2d 1092 (1963), *Bridgwood* v. *Newspaper P M Inc.*, 276 App. Div. 858 (2d Dep't 1949), *Pauling* v. *News Syndicate Co. Inc.*, 335 F. 2d 659 (2d Dep't 1964), *cert. den.* 379 U. S. 968 (1965); *Phillips* v. *Murchison*, 252 F. Supp. 513 (S. D. N. Y. 1966); moreover, the privilege given by §74 is not vitiated by the passage of time between the event and the report (*Kern* v. *News Syndicate Co. Inc.*, 9 A. D. 2d 662 (1st Dep't 1959) [15-year lapse between the issuance of the official document and the report thereof]; *Van Arsdale* v. *Time, Inc.*, 35 N. Y. Supp. 2d 951 (Sup. Ct. N. Y. Co. 1942), aff'd 265 App. Div. 919 (1st Dep't 1942) [6-year lapse]).

[13] "Substantial compensatory damages *must* be founded upon a finding of substantial injury." *Abell* v. *Cornwall Industrial Corp.*, 241 N. Y. 327, 335 (1925); "Damages given as a compensation should be precisely commensurate with the injury." *Gressman* v. *Morn. Jour. Assn.*, 197 N. Y. 474, 480 (1910). See also *Crane* v. *New York World Tel. Corp.*, 308 N. Y. 480 (1955) and *Mattheis* v. *Hoyt*, 136 F. Supp. 119, 124 (W. D. Mich. 1955).

respondent's suit was, therefore, frivolous under 28 U. S. C. §1915(d). Chief Judge Lumbard held the action should have been dismissed under this section.

Judge Lumbard was correct; the frivolity concept was written into the statute so that suits "devoid of merit" (24) will not clutter the courts at the public's expense. This suit demonstrates, perhaps better than any, why the frivolity concept should not be read out of 28 U. S. C. 1915. First, this is not a suit concerning the validity of respondent's incarceration or the fairness of his sentence. The law has given him his day in court on those issues (see fn. p. 4, *supra*). Second, it does, indeed, seem "inconceivable that Urbano could succeed in this matter after a trial on the merits" (23). Third, respondent is, again in Judge Lumbard's words, misusing the permissive mandate of §1915 to "clutter the courts" (24). He has commenced at least 11 other actions, 6 of which are similar to the case at bar.* Even the most generous reading of §1915 requires that this suit be dismissed as frivolous.

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* See Appendix F.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari be granted and this case summarily reversed upon the authority of *Woods* v. *Interstate Realty Co.*, 337 U. S. 535 (1949) or, in the alternative, that this petition for a writ of certiorari be granted and the case placed upon the appropriate calendar.

Respectfully submitted,

JAMES W. RODGERS
Counsel for Petitioner

RONALD S. DANIELS
ANSON M. KELLER
of Counsel

APPENDIX A

Opinion of the Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

September Term, 1965.

(Submitted October 4, 1965 Decided March 11, 1966.)

Docket No. 30354

ROBERT F. URBANO,

Plaintiff-Appellant,

—v.—

NEWS SYNDICATE CO., INC.,

Defendant-Appellee.

Before:

LUMBARD, *Chief Judge,*
WATERMAN and HAYS, *Circuit Judges.*

Application for leave to proceed *in forma pauperis* and for assignment of counsel in connection with an appeal from an order of the United States District Court for the Southern District of New York, Dudley B. Bonsal, *Judge,* dismissing plaintiff's complaint on the ground of incapacity to sue. Federal Rule of Civil Procedure 17(b); New York Penal Law §511(1).

ute involves an assessment of the merits of the plaintiff's action, e.g., *Kinney* v. *Plymouth Rock Squab Co.*, 236 U. S. 43 (1915); *Richardson* v. *Hatch*, 134 F. Supp. 110 (W. D. Mich. 1955) (and cases cited therein), and that the merits of the action will be more carefully scrutinized in a civil case than in a criminal appeal before leave to proceed is granted, see *Weller* v. *Dickson*, 314 F. 2d 598, 600 (9th Cir. 1963).

The trial court granted defendant's motion to dismiss on the ground that Urbano lacked capacity to sue. N. Y. Penal Law Sec. 511. In my opinion, Urbano's action here is "frivolous" within the meaning of Sec. 1915(d). Thus, defendant's motion below to deny leave to proceed and to dismiss the complaint should have been granted, and I would deny Urbano's application to this court in all respects. A statement of the facts is necessary to support this conclusion.

On May 19, 1960, Urbano was sentenced to life imprisonment for a murder committed in the course of a New Jersey robbery; he was committed to a New Jersey State penitentiary where he is now serving his life sentence. On or about September 14, 1961, the Federal Bureau of Investigation issued a press release purporting to describe Urbano's criminal career, which had culminated in the robbery-murder for which he was convicted. On December 9, 1962, the defendant newspaper published a feature story in its Sunday edition which traced Urbano's fantastic "triple life" as a bank and department store robber in Pennsylvania, Maryland and New Jersey, a "Continental playboy and bon vivant," and a secretive and temperamental vagabond member of a Williamtown, Massachu-

setts, family. This action for libel grew out of that newspaper feature.

It seems inconceivable that Urbano could succeed in this matter after a trial on the merits. Defendant claims that its article was based upon, and went no further than the FBI press release and therefore that the article was privileged. Although under New York law this claim depends upon whether the press release was a "judicial proceeding, legislative proceeding or other official proceeding," N. Y. Civil Rights Law Sec. 74 (McKinney's 1965 Supp.), the existence of the report could at least be introduced as mitigating circumstances" surrounding the sources of defendant's information and the grounds for its belief in the truth of the article, N. Y. Civil Rights Law Sec. 78 (McKinney's 1965 Supp.).

Even assuming that defendant's article went beyond the FBI release and included some material not entirely true, Urbano still must show that he was damaged by the publication. It seems highly improbable that he could show "actual malice" on the part of the newspaper; thus, under New York law he could not recover punitive damages. See *Crane* v. *New York World Telegram Corp.*, 308 N. Y. 470, 476, 126 N. E. 2d 753 (1955). As for compensatory damages, it taxes credulity to assume that one serving a life sentence for robbery-murder could prove that a newspaper article attributing to him other crimes of a like nature either injured his reputation or caused him "pain and suffering" to any meaningful extent.

It is true that a libel per se, such as imputation of crime, is actionable without proof of damages. Prosser, Torts 584 (2d ed. 1955). But the question here is not whether the

action is cognizable but whether the federal courts should exercise their discretion to permit this suit at the taxpayers' expense.

As my brothers recognize, it would be unfair to any attorney to assign him to handle such a trial. I would go one step further and hold that this claim, while technically "actionable," is so devoid of merit on its facts as heretofore alleged that it should not be permitted to go to trial at the public's expense. While the federal courts should not permit incarceration effectively to deprive criminals of access to federal diversity jurisdiction to redress wrongs committed against their persons, either in prison or out, it is also important not to encourage suits by inmates that are instituted merely to harass public officials or publishers, to clutter the courts, or to provide a break in the monotony of prison life. Compare *Higgins* v. *Steele,* 195 F. 2d 366, 369 (8 Cir. 1952); *Mattheis* v. *Hoyt,* 136 F. Supp. 119 (W. D. Mich. 1955). Therefore, despite Judge Bonsal's dictum to the effect that if frivolity "were the only ground, the Court would not dismiss the action at this stage of the proceeding," I would affirm the lower court's decision on the ground that this is an inappropriate case for the granting of leave to proceed *in forma pauperis.*

The above ground being dispositive of the case, I need not reach the difficult question whether Urbano lacks capacity to bring this suit at all. However, I think it important to note the problems raised by an issue so cavalierly treated by the majority. In *Hanna* v. *Plumer,* 380 U. S. 460, 470 (1965), the Supreme Court noted that the mandate of *Erie R.R.* v. *Tompkins*—which might here imply that N. Y. Penal Law Sec. 511 is controlling of Urbano's capac-

ity—has never been invoked to void a Federal Rule of Civil Procedure; the Court implied that where a Federal Rule was directly applicable to an issue, as Rule 17(b)[1] is here, it is to be applied even in a diversity suit. But assuming that Massachusetts law is therefore applicable,[2] the majority takes at best a cursory look at that law. If, as Judge Bonsal concluded, Massachusetts would declare Urbano civilly dead in her own courts, how can the majority conclude that Massachusetts would not intend the same rule to govern this case? And, if Massachusetts would in fact show so little concern for New York defendants, is this not a strong reason for applying the New York law in a federal court in New York, since the New York capacity rules "substantially affect those primary decisions respecting human conduct which our constitutional system leaves to state regulation"? *Hanna* v. *Plumer*, 380 U. S. at 475 (concurring opinion of Mr. Justice Harlan); see Hart & Wechsler, The Federal Courts and the Federal System 633-34, 678 (1953). Perhaps ultimately the question is so wrapped up in choice of law problems that Rule 17(b) as applied here runs contrary to the decision in *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U. S. 487 (1941), which held that the choice of law rules to be applied by a federal court in a diversity suit must conform to the rules prevailing in the forum state.

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[1] "The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile."

[2] Judge Bonsal held that Urbano's domicile is Massachusetts, his domicile prior to arrest, rather than New Jersey, the state of his incarceration, because Urbano is not voluntarily residing in New Jersey.

I am not necessarily willing to conclude, as did Judge Bonsal, that Urbano lacks capacity to bring this suit under New York law, because I am not at all certain that New York courts would consider Section 511 applicable.[3] Nevertheless, *if* under the laws of both Massachusetts and New York Urbano would lack capacity to sue in the courts of either state, a proposition which the majority does not disprove, I do not see how a different result can be justified in a diversity action between a Massachusetts plaintiff and a New York defendant, regardless of how distasteful my brothers find the concept of "civil death."

I would deny Urbano's application in all respects.

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[3] For one thing, it is not entirely clear that New York would apply Sec. 511 to bar suits by persons serving life sentences in other states. Compare *Jones* v. *Jones*, 249 App. Div. 470, 292 N. Y. Supp. 705, *aff'd*, 274 N. Y. 574 (1937), with *Panko* v. *Endicott Johnson Corp.*, 24 F. Supp. 678 (N. D. N. Y. 1938). For another, I have some doubt that Sec. 511 was intended to apply to this type of suit since N. Y. Penal Law Sec. 512-a provides that "any injury to his [a convict's] person . . . is punishable in the same manner as if he were not sentenced or convicted." Absent further guidance from the New York courts on this matter, I would hesitate to deny inmates access to the courts for redress of tortious injuries to their persons on the basis of an outdated and inscrutable common law concept. See Comment, The Rights of Prisoners While Incarcerated, 15 Buffalo L. Rev. 397, 398-404 (1965).

APPENDIX B

Opinion of the United States District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ. 3168

Motion #48 1/7/64

ROBERT F. URBANO,

Plaintiff,

—against—

NEWS SYNDICATE CO., INC.,

Defendant.

BONSAL, *D.J.*

This action for libel based on an article published in defendant's newspaper "Sunday News", issue of December 9, 1962, was filed on October 25, 1963, and the defendant was served on October 29, 1963.

Plaintiff alleges that he is a citizen of Massachusetts and that he is presently incarcerated in the New Jersey State Prison at Trenton. With his complaint, plaintiff filed an application for leave to proceed *in forma pauperis*, with the requisite supporting affidavit.

Defendant moved for an order (1) dismissing the complaint on the ground that plaintiff has no capacity to

sue, or (2) denying plaintiff's motion for leave to proceed *in forma pauperis* and striking his complaint from the files of this Court on the ground that the alleged cause of action has no merit. Defendant's motion came on for argument on January 7, 1964, and no attorney appearing for plaintiff, the Court, by memorandum dated January 16, 1964, appointed Harris B. Steinberg, Esq. attorney for the plaintiff with respect to plaintiff's motion to proceed *in forma pauperis* and defendant's motion to dismiss. Pursuant to said order, Mr. Steinberg duly served, and filed a memorandum on February 28, 1964. In addition to the memorandum filed by Mr. Steinberg and by counsel for the defendant, the Court has considered two memoranda filed by plaintiff *pro se*.

The facts, briefly stated, are that on May 19, 1960 plaintiff having been indicted in New Jersey for murder in the commission of robbery and having pleaded *non vult*, was sentenced to life imprisonment in the New Jersey State Petitentiary. On or about September 14, 1961, the Federal Bureau of Investigation issued a press release purporting to describe plaintiff's career and various crimes which he was alleged to have committed. On December 9, 1962, some fifteen months later, defendant published an article in the Sunday News, allegedly based on the F. B. I. press release. This article is the subject of plaintiff's libel action.

The crucial issue raised in both plaintiff's motion for leave to sue *in forma pauperis* and in defendant's motion to dismiss, is whether plaintiff has capacity to sue. Rule 17(b) of the Federal Rules of Civil Procedure provides that the capacity of an individual to sue shall be determined by the

law of his domicile, and in his complaint plaintiff described himself as a citizen of Massachusetts.* It appears that Massachusetts has no statute limiting the capacity of persons serving a life sentence to bring an action. Indeed, after diligent research, counsel have only been able to come up with two ancient Massachusetts cases, neither of them directly in point, from which they reach different conclusions. *Greenough* v. *Welles,* 64 Mass. 571 (1852); *Commonwealth* v. *Green;* 17 Mass. 515, 17 Tyng 417 (1822). The most the Court can glean from these cases is that under the old common law a domiciliary of Massachusetts serving a life sentence would be considered civilly dead in that State, but not outside of it. No Massachusetts authority has been submitted by counsel, and the Court has found none that bars this plaintiff from bringing an action in New York.

New York provides by statute that "A person sentenced to imprisonment for life is thereafter deemed civilly dead." New York Penal Law §511(1). Paragraph 3 of Section 511 of the Penal Law provides that a person who has been sentenced to imprisonment for life may institute an action while he is released on parole or after he has been discharged from parole with respect to matters other than those arising out of his arrest and detention. New York Penal Law §511(3). Section 511 of the Penal Law is part of Article 46, Civil Rights. While New York may not legislate

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* Suggestion has been made that Urbano's domicile is in New Jersey where he is presently incarcerated. However, in the Court's view, plaintiff's arrest and imprisonment did not constitute a change of domicile, and if his domicile was in Massachusetts, it continued there until such time as he voluntarily changed his domicile to another state.

as to the status of persons outside the State, it may properly, in line with its own public policy (and in the absence of any overriding Federal constitutional consideration not here presented), limit the civil rights which may be exercised within the State by persons under life sentence anywhere. It seems to the Court that this is precisely what Section 511 does, and it is the Court's view that it is bound to follow Section 511, notwithstanding Rule 17(b), Fed. R. Civ. P. *Erie R. R.* v. *Tompkins,* 304 U. S. 64 (1938). See *Hill* v. *Gentry,* 280 F. 2d 88 (8th Cir.), *cert. denied,* 364 U. S. 875 (1960).* In view of the lack of authority on the subject, it is doubtful whether the framers of Rule 17(b) considered the case of individuals sentenced to life imprisonment.

In two cases the New York courts have applied Section 511 to bar suits by persons serving a life sentence in another state: *In re Lindewall's Will,* 287 N. Y. 347 (1942) and *Pallas* v. *Misericordia Hospital,* 264 App. Div. 1, 34 N. Y. S. 2d 881 (3rd Dept. 1942), *aff'd* 291 N. Y. 692 (1943). However, in these cases the indications are that

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* Compare Section 510 where the prohibition is limited to imprisonment *in a State prison.* As so limited, it has been held that the section does not apply to a person serving a sentence in a Federal prison. *In re O'Connor,* 173 N. Y. Misc. 419, 17 N. Y. S. 2d 758 (Sup. Ct., Sp. Term, 1940). No such limitation appears in Section 511. Section 510-a provides that no person who has been convicted of a felony shall have the right to register or vote at any election except as provided in Section 152 of the Election Law, which in turn provides, in para. 5, that no person who has been convicted in another state of a crime which would constitute a felony in New York may register or vote unless he has been pardoned or restored to citizenship rights in the other state. Compare also Section 514 regarding the protection of civil and public rights, where distinction is made between a citizen of New York and any other person.

the prisoners were New York domiciliaries and both involved property rights in New York—*Lindewall* the right to share in an estate, and *Pallas* an award under the New York Workmen's Compensation Law.

In *Jones* v. *Jones,* 249 App. Div. 470, 292 N. Y. S. 705 (3rd Dept.), *aff'd* 274 N. Y. 574 (1937), the defendant Mrs. Jones married Montgomery in Virginia in 1911. Montgomery was sentenced to death in North Carolina following conviction of a felony, and his sentence was commuted to life imprisonment on June 11, 1923. The defendant married Jones in New York on May 26, 1923 (apparently before Montgomery's death sentence had been commuted). In 1935, Mr. Jones sued for annulment on the ground that Mrs. Jones already had a husband. The Appellate Division and the Court of Appeals, in reversing the trial court, held that Montgomery was legally dead at the time of Mrs. Jones' marriage to Jones and directed that the annulment action be dismissed. So, in *Jones,* New York applied its own public policy in determining that a man who married in another state and is serving a life sentence in a third state is legally dead.

It seems to the Court that the same rationale applies to all cases instituted in the New York courts by persons under life sentence, whether in a New York or out of New York penal institution, where New York rights are involved, including cases where the cause of action arises in New York. Plaintiff points out that a contrary decision was reached by a Federal court in *Panko* v. *Endicott Johnson Corp.,* 24 F. Supp. 678 (N. D. N. Y. 1938), where the court, "not without some hesitation", (*Panko* at 682) denied a motion to dismiss a complaint founded on negligence alleged to have

occurred in New York and brought by a plaintiff under life sentence in Florida. This case was decided before *Lindewall* and *Pallas*, and the decision leads to the anomalous result that access to the New York courts may be had by non-resident plaintiffs serving life sentences in other states on causes of action arising in New York when such access is denied to persons serving life sentences in New York. It would be most unusual if in adopting the civil rights section of the Penal Law the Legislature intended to give greater civil rights to foreign felons than to New York felons.

Accordingly, the Court concludes that Section 511 embodies a declared public policy of New York and hence is a rule of New York substantive law binding on this Court under the doctrine of *Erie R. R.* v. *Tompkins, supra,* and acts as a complete bar to this Court taking jurisdiction of this action notwithstanding Rule 17(b) of the Federal Rules of Civil Procedure. Cf. *Iovino* v. *Waterson,* 274 F. 2d 41, 45-48 (2d Cir. 1959), *cert. denied,* 362 U. S. 949 (1960).

In view of the foregoing, the Court need not pass on defendant's contention that plaintiff's action is frivolous and without merit, except to observe that if this were the only ground, the Court would not dismiss the action at this stage of the proceedings. This action presents substantial questions, as for example, whether plaintiff had any reputation to injure under the circumstances, and whether defendant's article, published fifteen months after the F. B. I. news release, was privileged.

The Court is grateful to Mr. Steinberg, who served without compensation as attorney for the plaintiff in this motion and who supplied the Court with a comprehensive memorandum of law.

Appendix B

Plaintiff's motion for leave to sue *in forma pauperis* is denied. Defendant's motion to dismiss the complaint is granted.

It is so ordered.

Dated: New York, N. Y.
April 20, 1964.

DUDLEY B. BONSAL
U. S. D. J.

APPENDIX C

Statutes and Rules Involved

28 U. S. C. 2072

§2072. Rules of civil procedure for district courts

The Supreme Court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts of the United States in civil actions.

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution.

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported.

All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court. June 25, 1948, c. 646, 62 Stat. 961; May 24, 1949, c. 139, §103, 63 Stat. 104; July 18, 1949, c. 343, §2, 63 Stat. 446; May 10, 1950, c. 174, §2, 64 Stat. 158; July 7, 1958, Pub. L. 85-508, §12(m), 72 Stat. 348.

Appendix C

Rule 17. Federal Rules of Civil Procedure

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States.

(b) Capacity to Sue or Be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by Title 28, U. S. C., §§754 and 959(a). As amended Dec. 27, 1946, and Dec. 29, 1948, effective Oct. 20, 1949.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

New York Penal Law §511

§511. Consequences of sentence to imprisonment for life

1. A person sentenced to imprisonment for life is thereafter deemed civilly dead; provided, that such a person may marry while on parole, or after he has been discharged from parole, if otherwise capable of contracting a valid marriage. Such capability shall be deemed to exist where the marriage of a person sentenced to imprisonment for life has been terminated by divorce, annulment, or subsequent remarriage of a former spouse. A marriage contracted pursuant to this section by a person while he is on parole, without the prior written approval of the board of parole, shall be a ground for revocation of the parole.

2. This section shall not apply to a person sentenced to imprisonment for an indeterminate term, having a minimum of one day and a maximum of his natural life.

3. Nothing in this section shall be deemed to suspend the right or capacity of a person sentenced to imprisonment for life, while he is released on parole, or after he has been discharged from parole, to institute an action or proceeding in a court or before a body or officer exercising judicial, quasi-judicial or administrative functions, with respect to matters other than those arising out of his arrest and detention.

4. Nothing in this section shall be deemed to preclude the issuance of a certificate of good conduct by the board of parole pursuant to the executive law to a person who previously had been sentenced to imprisonment for life. As amended L. 1950, c. 144, §1; L. 1950, c. 525, §1; L. 1952, c. 167; L. 1953, c. 176, §2; L. 1956, c. 818; L. 1962, c. 107, eff. March 6, 1962.

Rule 19, Rules of the Supreme Court of the United States

Rule 19. Considerations governing review on certiorari

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

28 U. S. C. §1915

§1915 Proceedings in forma pauperis

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith,

(b) In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(c) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

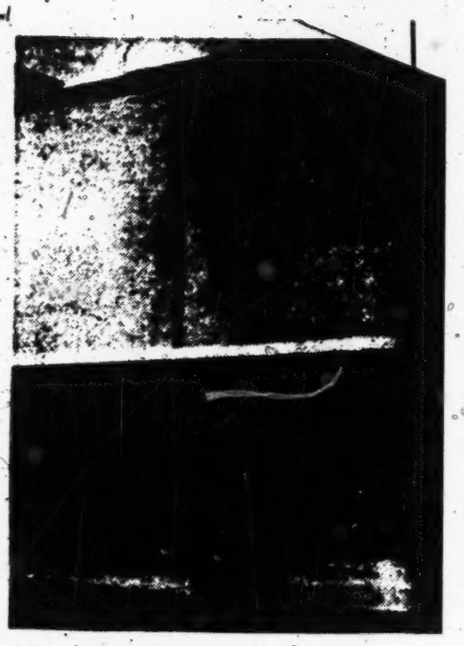
(e) Judgment may be rendered for costs at the conclusion of the suit or action as in other cases, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States. As amended Oct. 31, 1951, c. 655, §51(b, c), 65 Stat. 727; Sept. 21, 1959, Pub. L. 86-320, 73 Stat. 590.

APPENDIX D

Petitioner's Article

(See Opposite) ☞

Robert Francis Urbano's apathetic expression conceals his agility as a schemer.



Bamberger's Department Store, Paramus.

The Justice Story

'Stand back!' was his password to easy money and a triple life

By RUTH REYNOLDS

FEW of the customers or clerks noticed the neatly dressed, sad-eyed little man who minced through the furniture section of the department store to the adjacent credit office. But then he vaulted the counter, brandished a gun in the face of the credit manager, James J. Blanch, and shouted, 'This is a stick-up! Stand back! Stand back!'

The amazed credit manager, with more courage than common sense, grabbed at the gunman, who was now wearing a mask. Part-time furniture salesman Leo Zaritsky, who was close by, lunged in to help. Salesman Frank Cramer, 150 feet away, rushed over when he heard a woman scream.

The robber's pistol blazed three times.

Zaritsky died where he fell, a slug in his head. Blanch sagged when a bullet hit his left arm, but with his right hand he pulled his assailant down with him. Cramer, who was wounded in his right arm, pinned the gunman to the floor. Charles Joney, a large-bodied customer, subdued the stickup man by hitting him on the head with a can of cleaning fluid.

Shots Touch Off Panic

The sound of gunfire sent a momentary hush through the crowd of shoppers. Then they panicked, knocking one another down, trampling and screaming in fright. Store detectives and police arrived. So did doctors and ambulance attendants. Everybody talked at once.

The date: Jan. 15, 1960. The time: 6 P. M. The place: the basement of Bamberger's Department Store in the heart of the huge Garden State Shopping Plaza at the intersection of Routes 4 and 17 in Paramus, N. J.

Blanch, 49, and Cramer, 41, were taken to hospitals. Their condition was not deemed serious. Zaritsky lived with his widowed mother; arrangements were made for a rabbi to tell her of his death.

In the office of the Bergen County prosecutor's first assistant, Fred C. Calba, the bandit seemed more belligerent than remorseful when he was told that a man had been killed by one of the three bullets from his 9 mm. foreign gun.

"It was very foolish for him to come at me when I had a gun!" he scolded. He identified himself as Edward Lehman, 30. He said he had arrived in Paterson, N. J., four days before from Phoenix, Ariz., and had spent most of his time sleeping in parked automobiles. Because he needed money, he cased the store's credit department and decided to rob it when he found there were seldom many people in the semi-open conference cubicles or in the customer's waiting room.

For good measure—and as a complete non sequitur—the gunman added that he had a master of arts degree from the University of North Dakota. The police thought he was lying.

Every stitch of his clothing was sent to the police laboratory in the hope that a laundry or dry cleaning mark would provide more accurate information about the prisoner. By midnight, he was arraigned (in a borrowed jacket, corduroy shirt and dungarees) on a charge of homicide before Municipal Judge Martin Freedman in Paramus. After entering a mandatory plea of not guilty, he was returned to the Bergen County Jail in Hackensack.

Meanwhile, Ed Kastner, prosecutor's detective, took the gunman's fingerprints to Washington, D. C., to check them against military files and with the Federal Bureau of Investigation.

Former Army Officer

Military records showed the holdup man was actually former 2d Lt. Robert Francis Urbano, 38, of Williamstown, Mass., who had flown bombing missions over Germany in World War II and was honorably discharged from the Air Force in December 1945.

"So that's who he is!" exclaimed FBI agents. They had no fingerprints on the man, but from his modus operandi they recognized him as a bank bandit who had eluded them for six years.

Agents hurried to Hackensack to question the prisoner—and unveiled the career of a man who lived three fantastic lives for the greater part of a decade.

• • •

ROBERT FRANCIS URBANO was born on April 12, 1922, the son of a closely knit and respected Williamstown family. After graduation from high school, he undertook a geology major at the University of Illinois, but his studies were interrupted by the war. He obtained his degree in 1947 and had a year of postgraduate study at the University of Arizona.

During his youth, his idiosyncrasies troubled his family. He was a loner and always secretive. He was critical of others, but quick to take offense when criticism was directed toward him. He was given to temper tantrums and ungovernable rages when he could not have his own way.

It was just as well his family didn't know he had resorted to burglary in Arizona. In December 1948, he was caught in Phoenix. He received a 5-year suspended sentence and his probation officer gave him permission to return to his home town.

Urbano's unsuspecting relatives were

N.J., was the scene of a fatal holdup.

Body of furniture salesman Leo Zaritsky is wheeled out of department store.

Leo Zaritsky in Army service foto.

NIMBLE BANDIT

rather pleased with the change in him. He paid strict attention to his job with the Williamstown municipal government and, on the side, he operated an antique shop, which took him out of town on buying trips. He seemed prosperous and he became extremely generous.

Actually, he had begun the second of his three lives . . .

In January 1954, while he was ostensibly antique-hunting, Urbano rented an automobile in New York and drove to Philadelphia. He registered at a good hotel, then strolled about looking for a car with the keys in the ignition or the ignition in an "on" position. He found one—careless car owners come by the dozen. He drove it to a parking lot and left it for the night.

Cases the Bank

Next day, he used this stolen car to survey the streets around the bank he intended to rob. He left his rented car in a parking lot within a mile of this bank.

He dressed carefully for his first appearance in his new career—trench coat, pork-pie hat, gloves, spectacles, gun and a woman's scarf to be used as a mask.

On Jan. 19, 1954, Urbano walked to N. Fifth St. and with short, quick steps entered the Founders Oxford Federal Savings and Loan Association. No one paid any attention to him. He raised his mask and made a one-hand vault over the counter, pistol in his other hand.

"This is a stick-up! Stand back! Stand back!" he called.

Within seconds, Urbano was hurrying from the bank with $3,016 in cash. He made his way on foot to his rented car and drove back to New York. The robbery was headlined in the Philadelphia newspapers. FBI agents, called in because a Federal Reserve bank had been robbed, refused to reveal any details of their investigation.

Some six weeks later—on March 2, 1954—Urbano used the same procedure in an Elkins Park, Pa., branch of the Cheltenham National Bank. He vaulted the counter in the tellers' area and returned in a matter of seconds, some $7,248 wealthier for his two leaps.

Of course, FBI agents and Philadelphia newspapermen noticed the similarity between this quick-moving, trench-coated masked "jumper" and the Philadelphia bank bandit.

With over $10,000 in his kit, Urbano was ready to start his third life.

He had already told his family that he thought he'd try living in Paris—so after he turned in his rented car in New York City, he took a plane for France.

As detectives hunted the bank robber in the environs of Philadelphia, Urbano, on a plane droning over the Atlantic, reflected on how well he had fared in just two appearances as a bandit. He suspected rightly that Philadelphia banks would tighten their protective measure and robbery there would be hazardous in the immediate future.

In Paris, he assumed the role of Roberto F. Urbano y de Blanquart, wealthy scion of an aristocratic French family, who enjoyed a substantial income from mining investments in the U. S.

He did not mention this when he wrote to his family. He told them he had a job with a large American construction company. His failure to say whom he worked for or exactly what he did, did not surprise them because he had always been reticent.

His fairly frequent letters indicated that things were going well with him in his new employment. He said he hoped to come home at least semi-annually. On each visit, he brought expensive gifts. He seemed to be growing wealthy from his employment abroad—able to purchase Dutch china, Swedish chairs, various antiques and paintings from contemporary artists.

During his January 1956 trip to the United States, he jumped the counter of the Erdman Ave. branch of the Fidelity-Baltimore National Bank and Trust Co. in Baltimore. His surprise leap, his gun, and his sharp command, "This is a stick-up! Stand back! Stand back!" produced the expected effect. Everybody stood stock-still until he fled with $16,853.

* * *

SIX months later—on June 22, 1956—he struck another Elkins Park branch of the Cheltenham National Bank and obtained $18,203.

Well-Heeled Phony

With this $35,056, Roberto F. Urbano y de Blanquart was able to travel extensively in England, Yugoslavia, Italy, Greece, Switzerland and, of course, France.

He had an Italian bootmaker fashion fine shoes to fit his small feet. His British tailor carefully contoured expensive suitings over his sloping shoulders so his jacket hung in the proper drape. Shirts, ties and accessories were carefully chosen at the better Paris shops. All 5 feet and 7 inches of the traveler was turned out impeccably—barbered, manicured and attired for every occasion—even American robberies.

For these events, he customarily bought cheap clothing in New York stores—favoring plaid shirts, chino trousers, trench coats and gabardine rain hats.

Thus garbed, he visited the North Charles St. branch of the Fidelity-Baltimore National Bank and Trust Co. on Jan. 24, 1957, and four hours later was back in New York City, 186 miles to the north, with $4,592.

His Massachusetts kinfolk were pleased to see him again four months later although he couldn't spend much time in Williamstown.

On May 29, 1957, his customary method netted him $9,520 from the Bridgeville National Bank in a shopping center near Pittsburgh. Two weeks later, he picked up $23,130 (his largest single profit) at the College Park, Md., branch of the Suburban Trust Co.

This time a truck impeded his getaway and a loud-mouthed truck driver yelled, "Where ya think you're goin'?"

Calmly, Urbano fired a bullet into the door of the truck. It moved away, fast.

He visited the First National Bank of Baltimore (Pulaski Highway branch) on March 28, 1958, and returned to Europe with $18,602. In October of that year, he leaped the counter of another Philadelphia branch of the Cheltenham National—and later deposited $17,537 in his account with the Swiss Bank Corp. in Geneva.

FBI Had Him Figured

Throughout this period, FBI agents meticulously examined every detail of each robbery and realized that one man was responsible for the entire string of holdups. The technique of "the jumper" was no clearly discernible, although his identity was a mystery.

Also, throughout this period, Roberto F. Urbano y de Blanquart was gaining a reputation he prized highly—that of a Continental playboy and bon vivant. Doormen at the best hotels and restaurants in half a dozen countries attended to the parking of his white Mercedes-Benz while he minced across carpeted foyers. His speech and manners were flawless, if a trifle effeminate.

Urbano's European friends thought nothing of his constant trips to the United States. They knew him to be a man of varied interests. Understandably, he had to maintain his contacts with American bankers and businessmen. The trips were most certainly successful, because when his plane landed, he usually went directly to his bank—either to the Midland Bank in London or the Swiss Bank in Geneva. On his return to Paris, he had a stack of high-denomination franc notes, often 2 inches thick.

In 1959, Urbano made a slight change in his operations. He leaped to financial success ($7,300 in cash and $2,500 in checks) in a department store in Arlington, Va.

Two days later—on Feb. 13, 1959—he netted $7,905 in a holdup of a department store in Wilmington, Del.

On his next trip home, in July, 1959, he increased his cash by $19,620, taken from the Farmers Bank of the State of Delaware. (The bank is located in a Wilmington department store.)

Then in January, 1960, at the Paramus, N.J., shopping center, Blanch Cramer and Zaritsky did what had never been done before. They failed to obey his command. They tackled him—and he fired.

Jailed, Urbano answered most of the FBI agents' questions.

When they attributed 13 bank robberies and two department store holdups to him, he signed statements admitting the store holdups but only 10 bank robberies. He said, blandly, that his memory was hazy as to the time and place of some robberies.

Urbano claimed that he did not keep track of his "earnings," but he agreed that the FBI figure of $175,000 to $200,000 "sounds right." He said all of the guns he used in the holdups were fully loaded and he was prepared to shoot anyone who interfered with him.

Urbano said he arrived on his last trip from Europe (fare $532) on Dec. 10, 1959. He spent Christmas with his family, bought his gun in Vermont, and then visited friends in New York, where he rented a red station wagon. (It was found on a Paramus parking lot within a mile of Bamberger's.) He then proceeded according to plan—but when he was caught he had only $11 in his pockets.

He said his only reason for giving the name of Lehman upon his arrest was to protect his relatives.

They didn't want his "protection." The minute Urbano was identified, his brother, Lawrence, an assistant U. S. attorney in Boston from 1954 to 1956, hurried to New Jersey to see what could be done for him.

Much-Indicted Man

Ten days after the shooting, he was indicted for murder in the first degree. Federal indictments charging bank robbery also were drawn up against him in Baltimore, Wilmington and Philadelphia. Pennsylvania indicted him for the robbery at Bridgeville.

Court-assigned lawyers David L. Gelber and James L. Montgomery asked that Urbano be given a sanity hearing on the ground that his mental condition made them unable to prepare his defense against the murder charge.

Agreeing to conduct the hearing, Bergen County Judge Arthur J. O'Shea heard two state psychiatrists say that Urbano had psychotic tendencies but was above normal intelligence. A psychiatrist for the defense said he was a paranoid schizophrenic with suicidal tendencies, a persecution complex and delusions of grandeur. Judge O'Dea ruled that Urbano was capable of conferring with his attorneys.

Then came a plea of non vult (no contest) to the indictment charging him with the murder of Zaritsky. Two days later, Judge O'Dea sentenced Urbano to life imprisonment, and he was taken to the New Jersey State Prison in Trenton.

The federal indictments were dismissed, but Pennsylvania filed a detainer asking that Urbano be delivered to Bridgeville authorities if he is ever released from his present sentence.

So Urbano now has a fourth role—that of convict—and this one appears likely to have the longest run.

APPENDIX E

Press Release of the United States Department of Justice, Federal Bureau of Investigation

(See Opposite) ☞

Appendix E

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

WASHINGTON 25, D. C.

September 14, 1961

ROBERT FRANCIS URBANO, aka
Roberto F. Urbano y de Blanquart,
Lester Layman Brown, Edward M
Lehman, Robert G Wood;
First National Bank of Baltimore
Pulaski Highway Branch
Pulaski Highway and Monument Streets
Baltimore, Maryland
March 25, 1958
BANK ROBBERY

The few shoppers making last-minute purchases in A. J. Bamberger's Department Store at the sprawling Garden State Shopping Center, Paramus, New Jersey, just before 6:00 p. m., Friday, January 15, 1960, had little reason to notice the neatly dressed, sad-eyed little man mincing along with short, quick steps toward the credit department on the lower level. All eyes in that department were focused on him minutes later, however, when, wearing a handkerchief mask, he vaulted over the counter, brandished a pistol and snarled, "This is a holdup! Nobody move!"

Credit Manager John Blanch, Cedar Grove, New Jersey, grabbed at the bandit. The .32 automatic cracked twice and Blanch sank to the floor with bullets in his chest and shoulder. Sales Clerk Leo Zaritsky of Rutherford, New Jersey, lunged at the gunman and again the pistol blazed in the bandit's small, gloved hand. A slug drilled into Zaritsky's head, and he died where he fell. Salesman Fred Kramer, Great Notch, New Jersey, was shot in the arm as he grappled for the death-dealing weapon. Kramer and Blanch subsequently recovered from their wounds.

Charles Jony, Rochelle Park, New Jersey, rushed into the fray from a nearby counter and slammed his newly purchased can of cleaning fluid against the killer's skull. Dazed, Robert Francis Urbano sagged to the floor beside his bullet-punctured victims as Jony and others

overpowered and disarmed him. Minutes later, Paramus, New Jersey, police officers relieved the shoppers and Bamberger employees of their quarry and carried him off to the Bergen County Jail, Hackensack, New Jersey.

On May 17, 1960, Urbano entered a plea of "non vult" to an indictment charging him with the murder of Leo Zaritsky. Two days later, Bergen County, New Jersey, Judge Arthur J. O'Dea sentenced Robert Francis Urbano to life imprisonment for that crime and terminated the illegal career of a man who had lived three lives for the greater part of a decade.

The identification of the masked Bamberger bandit as Robert Francis Urbano seemed incredible to his family and friends in Williamstown, Massachusetts. They thought that he had an excellent position in Paris, France, as a representative of an American corporation. His associates in Paris and other continental cities believed that Roberto F. Urbano y de Blanquart was the wealthy scion of an aristocratic French family and assumed that he enjoyed a substantial income from mining investments in the United States. Money seemed never to be a problem. However, about twice a year, he flew to the United States ostensibly to review his holdings and contact American bankers. It was the latter activity which made Robert Francis Urbano interesting to the Federal Bureau of Investigation.

Inquiries by the FBI revealed that Urbano was born April 12, 1922, at North Adams, Massachusetts. He was the son of a closely knit and respected family residing in Williamstown, Massachusetts. He graduated from high school and then undertook a geology major at the University of Illinois which was interrupted by a tour in the United States Air Force during World War II. Second Lieutenant Robert Francis Urbano received an honorable discharge from the United States Air Force in December, 1945, and returned to the University of Illinois where he obtained a degree in geology in 1947. That was followed by a year of post-graduate study of geology at the University of Arizona.

In December, 1948, Urbano was arrested on a charge of burglary in Phoenix, Arizona, for which he received a 5-year suspended sentence.

Urbano returned to Williamstown, Massachusetts, where he operated an antique shop and was employed by the Williamstown municipal government while maintaining contact with the State of Arizona probation officer. During this period, he continued to exhibit many personality characteristics that gave the Urbano family concern during Robert's youth. He moved about alone and was very secretive. He was

Appendix E

highly critical of others but readily took offense when criticism was directed toward him. He was given to temper tantrums and ungovernable rages when he could not have his way. Urbano intensely desired to make a big impression on everyone he met. He was generous with friends and relatives, often lavishing gifts and offering personal assistance in interior decorating without remuneration.

In 1954, Robert Francis Urbano went to Paris, France. Soon he wrote to inform his family that he had taken a job with a large American construction company and was residing at 27 Rue St. Ferdinand, Paris 17 e, France. Things appeared to go well for Urbano in his new employment. His family never knew exactly whom he worked for or precisely what he did. However, he had always been diffidently secretive with them.

On his semiannual visits to the United States, he occasionally brought expensive gifts for members of the family. In a few years it became obvious that Robert was becoming at least moderately wealthy from his employment abroad. He was able to indulge his interest in antiques and art, and he purchased a number of paintings by contemporary artists and various antiques as well as Dutch china and Swedish chairs. When he planed over from the continent, Robert always drove rented cars to Williamstown. After visiting friends and relatives there and in New York, he motored to the airport and flew back to Europe.

In Europe, Roberto F. Urbano y de Blanquart traveled in England, Yugoslavia, Switzerland, Italy, Greece and, of course, France. It became his custom to have an Italian bootmaker fashion fine leathers to fit his small feet in the current narrow-toe shoe styles. His tailor carefully contoured expensive suitings over Urbano's sloping shoulders so his jackets hung in the proper unwrinkled drape. Shirts, ties, and accessories were carefully chosen at the better shops and all five feet seven inches of Robert Francis Urbano turned out impeccably barbered, manicured, and attired for every occasion. His speech and manners were equally flawless although a trifle effeminate. Doormen at the best hotels and restaurants in a half dozen countries attended the parking of Urbano's white Mercedes-Benz while Urbano minced across the carpeted foyer. He casually let it be known that he was in the market for antiques, paintings, and other objets d'art. Roberto F. Urbano y de Blanquart soon gained the reputation he sought of continental playboy and bon vivant.

It was known that Urbano flew to the United States about every six months. His friends did not consider that unusual for a man of Urbano's varied interests. Understandably, he had to maintain his contacts with American bankers and businessmen. The trips must have

been successful because an acquaintance recalls that on one occasion Urbano traveled from the United States to his Swiss bank and then appeared in Paris with a two-inch stack of high denomination franc notes.

During the years that Robert Francis Urbano corresponded with the Arizona State Probation Officer he came to terms with himself. Burglary was not for him. It was in the early 1950's that he discovered that his real future was in the one-handed counter vault, pistol in hand, done to the strident cries of, "This is a stick-up--stand back, stand back," which spine-tingling exhibition never failed to command the prompt attention of all present. On January 19, 1954, the little bandit unveiled his newly acquired skill at the Founders Oxford Federal Savings and Loan Association, 5715 N. Fifth Street, Philadelphia, Pennsylvania, by vaulting the counter and taking $3,016 in cash at gunpoint. He accomplished this feat without removing his gloves and while wearing a pork-pie hat, trench coat, glasses, and a woman's scarf for a mask. The deed was headlined in Philadelphia newspapers. Many months of intensive investigation were to follow before the robber's identity was established.

On March 2, 1954, Urbano held up the Elkins Park Branch of the Cheltenham National Bank, 1919 Cheltenham Avenue, Elkins Park, Pennsylvania. He vaulted the counter and revaulted the counter from the tellers' area in a matter of seconds, some $7,248 wealthier for his two leaps. After this bank robbery, the Philadelphia newspapers were beginning to comment at length on the success of the quick-moving, sallow-faced bandit who usually wore a khaki raincoat or trench coat.

As the plane droned across the Atlantic en route to Paris, Urbano reflected on how nicely he had fared with the Pennsylvania banks and especially the Cheltenham National Bank. He suspected, however, that banks in the Philadelphia area might tighten their protective measures and bank robbery would be more hazardous there for a while. It was several months before he flew to the United States again to leap across cashiers' counters, this time to the consternation of Maryland bankers and the amazement of their customers.

In 1956, Urbano's operations began to show a clearer pattern when, on January 9, 1956, he robbed the Fidelity-Baltimore National Bank and Trust Company, Freedom Branch, 4500 Erdman Avenue, Baltimore, Maryland, of $16,853 and then six months later, on June 22, 1956, struck at the Cheltenham National Bank, Lynnewood Garden Branch, Elkins Park, Pennsylvania, where he obtained $18,203.

On January 24, 1957, he visited the North Charles Street Branch of the Fidelity-Baltimore National Bank and Trust Company and obtained a quick $4,592 by his one-handed vault. On May 29, 1957, he

briefly switched to the Pittsburgh, Pennsylvania, area where, by a few-minute stop at the Bridgeville National Bank, Cedarhurst Office, St. Clair Shopping Center, he came away with $9,520. Within two weeks he was back in his favorite bank robbery territory of Maryland, where on June 12, 1957, he picked up his largest single profit of $23,130 at the College Park, Maryland, Branch of the Suburban Trust Company. In this getaway, Urbano had to shoot into the cab of a truck which was hindering his getaway. He later boasted that he could very easily have shot either of the men in the truck but was satisfied that a shot landing in the door would stop them.

He again visited Maryland on March 28, 1958, when a stop at the First National Bank of Baltimore, Pulaski Highway Branch, netted him $18,602. On October 1, 1958, The Cheltenham National Bank was revisited with an appearance of Urbano at their Central and Laurel Avenue Office in Philadelphia, which added $17,537 to Urbano's Swiss bank account.

After busily engaging in robbing banks between 1954 and 1958, Robert Francis Urbano turned his attention to department stores and on February 11, 1959, took $7,300 in cash and $2,500 in checks from Kann's Department Store, Arlington, Virginia, which foray was immediately followed two days later by a holdup netting $7,905 from the Strawbridge and Clothier Department Store at Wilmington, Delaware. His last visit to a bank was on July 10, 1959, when at Wilmington, Delaware, he rapidly increased his financial holdings by $19,620, by robbing the Farmers Bank of the State of Delaware. In keeping with his changed pattern, first noticed by the FBI in February, 1959, this bank was located in the Wanamaker's Department Store at Wilmington, Delaware.

Between 1954 and 1959, 13 bank robberies and two department store holdups were attributed to Urbano. He signed statements admitting 10 bank robberies and the two crimes in the department stores. When asked whether he had committed three other bank robberies in which the modus operandi matched his own in almost every specific, Urbano blandly told interviewing FBI Agents that his memory was hazy as to the time and place of some of his robberies. He claimed he did not keep track of his earnings, but readily told FBI Agents that the figure of $175,000 to $200,000 "sounded about right."

Throughout this period, the Federal Bureau of Investigation was meticulously sifting every facet of the robberies. It was soon apparent that one man was responsible for the entire string of holdups. It was clear

that the robber preferred the modern suburban branch bank which customarily has the low, uncluttered customer counter separating the public from the cashiers. These the nimble bandit bounded over with no difficulty, swiftly obtained his loot, and, with another bound, was on his way out of the bank before the startled onlookers could react. Cars which had been stolen two or three days prior to the robbery were invaribly found a mile or so from the bank, abandoned in a large supermarket, hospital, school, or other public parking lot. The technique of "the jumper" was clearly discernible although his true identity was not.

Robert Francis Urbano subsequently related that he invariably rented an automobile from one of the major car rental agencies and motored from New York to the city where he intended to commit a bank robbery. He usually stopped off at a good class motel or one of the better hotels in Philadelphia, Baltimore, or Washington. Thereafter, he strolled about looking for a car in apparently good operating condition. Without exception, careless automobile owners provided Urbano with a getaway car because he always found one with the keys in the ignition or the ignition in the "on" position. He simply drove it off and put it in an overnight parking area.

The next day, or several days later, he would return to the stolen car and use it to survey the bank which he contemplated robbing. On the day of the actual robbery, Urbano would leave his rented car in a large parking lot within a mile of the bank and use the stolen car to drive to and from the bank. Upon returning to the parking lot with his loot, Urbano abandoned the stolen car and drove off in the rented vehicle. To show how fast moving Urbano was, within four hours of a bank robbery in Baltimore, the rented car was being turned in to the rental agent in New York City, a distance of approximately 186 miles.

Extensive investigation both in the United States and on the Continent, as well as Urbano's subsequent admission, revealed he was on a plane winging his way back to the United Kingdom or the Continent the night of, or day after, nine of the bank robberies and within three days of the others. Thus while local police officers and FBI Agents were conducting intensive investigation in the cities where the banks or department stores were robbed, Urbano was winging his way across the Atlantic by jet to make deposits with the Swiss Bank Corporation, Geneva, Switzerland, or the Midland Bank, Pall Mall Street, London, England. He also maintained accounts in the First National City Bank, New York City, and the Williamstown National Bank, Williamstown, Massachusetts

Urbano said that all of the guns he used during the holdups were fully loaded and he was prepared to shoot anyone who attempted to interfere,

as he so aptly demonstrated in the A. J. Bamberger Department Store robbery. He customarily purchased cheap clothing just prior to the holdup, favoring plaid shirts, chino trousers, gabardine rain hats, and trench coats. A handkerchief tied around his neck was Urbano's favorite mask.

Robert Francis Urbano related many details about some of his bank robberies which could have been known only to the perpetrator. He was subsequently viewed by witnesses to many of his robberies and was identified as the counter-leaping robber.

On May 24, 1960, Robert Francis Urbano entered New Jersey State Prison at Trenton, New Jersey, to begin his life commitment.

At this time, a warrant is filed as a detainer at New Jersey State Prison, Trenton, New Jersey, charging Robert Francis Urbano with the robbery of the Bridgeville National Bank, Cedarhurst Office, St. Clair Shopping Center, Scott Township, Pennsylvania, on May 29, 1957.

United States Attorneys in Baltimore, Maryland; Wilmington, Delaware; and Philadelphia, Pennsylvania, in September, 1960, took the necessary steps to dismiss the remaining Federal warrants outstanding for bank robbery against Urbano, commenting that since Urbano is already serving life imprisonment on first degree murder charges, additional prosecution would serve no useful purpose.

Wartime aviator, student, antique dealer, continental playboy, robber, murderer and now convict, it appears that Robert Francis Urbano is cast in his last role. It will have the longest run.

APPENDIX F

1. *Robert F. Urbano* v. *Readers Digest Association,* United States District Court for the District of Massachusetts, Civil No. 64-843-F; dismissed December 27, 1965. (Libel based on article in Readers Digest Issue of December 1963 which was based on FBI Report.)

2. *Robert F. Urbano* v. *C. D. DeLoach, Francis C. O'Neil, Donald T. Klingler, et al.,* United States District Court for the District of Columbia, Civil No. 2951-64; dismissed August 6, 1965 and August 18, 1965, leave to appeal *in forma pauperis* denied, October 26, 1965. (Action against various FBI agents for money damages.)

3. *Robert F. Urbano* v. *The Federal Bureau of Investigation and J. Edgar Hoover,* United States District Court for the District of Columbia, Civil No. 616-65; dismissed August 4, 1965, leave to appeal *in forma pauperis* denied as *frivolous* August 18, 1965. (Action for injunction based upon FBI Report used as basis for defendant's article in case at bar.)

4. *Robert F. Urbano* v. *Fawcett Publications, Inc.,* United States District Court for the District of Connecticut, Civil No. 11062. (Libel action based on article in True Magazine Issue of January 1963 which was based on FBI Report.)

5. *Robert F. Urbano* v. *Robert Liston,* United States District Court for the District of Maryland, Civil No. 15092. (Libel action against Fawcett Publications writer.)

6. *Robert F. Urbano* v. *Frederick Sondern, Jr.*, United States District Court for the District of Connecticut, Civil No. 11145. (Libel action against Readers Digest writer.)

7. *Robert F. Urbano* v. *The State of New Jersey*, 225 F. Supp. 798 (D.N.J.) *cert. den.* 377 U.S. 958 (1964) aff'd 333 F. 2d 845 (3d Cir. 1964), *cert. den.* 379 U.S. 993 (1965).

8. *Robert F. Urbano* v. *Calissi et al.*, United States District Court for the District of New Jersey, Civil No. 603-65 dismissed June 9, 1965, reversed on proc. grds. 353 F. 2d 196 (3d Cir. 1965) dismissed February 28, 1966. (Action for money damages against Bergen County, New Jersey Prosecutor, Sheriff et al.)

9. *Robert F. Urbano* v. *Richard J. Hughes, et al.*, United States District Court for the District of New Jersey, Civil No. 262-65, dismissed March 4, 1965, affirmed United States Court of Appeals for the Third Circuit, November 30, 1965.

10. *Robert F. Urbano* v. *State of New Jersey*, Superior Court of the State of New Jersey, County of Bergen, dismissed.

11. *Robert F. Urbano* v. *Harold S. Magee, M. D.*, United States District Court for the District of New Jersey, Civil No. 909-64, dismissed November 10, 1964.

APPENDIX G

Capacity of Persons Sentenced to Prison for Life to Sue

1952 Leg. Doc. No. 65 (Q)
S. Int. No. 1224
A. Int. No. 1437

Section 511 of the Penal Law provides that a person sentenced to imprisonment for life is thereafter deemed civilly dead. Consequently, it has been held that a person sentenced to imprisonment for life has no capacity to maintain legal proceedings. [omitting citations]

In 1946, section 510 of the Penal Law was amended to confer capacity to institute legal proceedings upon a person sentenced to state prison for a term less than for life while execution of the sentence remains suspended or while he is released on parole.

In two respects the rule which denies the right to maintain legal proceedings to a person sentenced to prison for life appears to be unjust and to run counter to sound public policy:

(1) A person sentenced to imprisonment for life, and therefore civilly dead, nevertheless has capacity to take, hold and transmit property. He has the power to make contracts or a will. While released on parole, although technically still serving his sentence, he is presumably endeavoring to pursue a normal course of life. To deny him the capacity to sue while on parole is at the outset to place him at a serious disadvantage in endeavoring to rehabilitate his life, conduct his business affairs, protect his property, and enforce his personal rights.

(2) A person who is sentenced to imprisonment for life, but the execution of whose sentence is suspended, is likewise one to whom the state has granted an opportunity to rehabilitate his life. To deny him the capacity to sue tends to defeat this very purpose.

The Commission believes that with respect to the two classes of persons above mentioned capacity to sue should be granted as to matters other than those which arise out of the convict's arrest or detention. No similar problem exists in the case of pardoned convicts, inasmuch as it appears to be the law that pardon removes disability to sue (People ex rel. Forsyth v. Court of Sessions, 1894, 141 N. Y. 288, 295, 36 N. E. 386).

The Commission is continuing its study of the disabilities imposed on persons sentenced to imprisonment for life, and of the status of civil death. No recommendation for legislation is made at this time, however, except with regard to the two matters referred to above.